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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,853	06/05/2001	Larry James Hughes	8552	5078

27752 7590 07/17/2007  
THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.  
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CINCINNATI, OH 45224

EXAMINER
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VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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07/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/874,853	<b>Applicant(s)</b> HUGHES ET AL.	
	<b>Examiner</b> John Van Bramer	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 27 and 37-54 is/are pending in the application.
- 4a) Of the above claim(s) 44-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27 and 37-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 23, 2007 has been entered.

#### ***Response to Amendment***

2. The amendment filed April 23, 2007, cancelled Claims 1-26, 28-34, and 36. Claim 27 was amended and claims 37-54 were added. Thus the currently pending claims are Claims 27, and 37-54.

#### ***Election/Restrictions***

3. Newly submitted claims 44-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Original claims 1-36 were directed towards a system and method for providing a marketing and testing purchase environment that includes a user interface configured to receive user input. A purchase environment is displayed and the users are also provided with questions regarding products. The user's answers

to the questions and the data collected regarding their interactions ("clicks") with the purchase environment are collected and analyzed.

New claims 44-54 are directed towards a method for collecting testing data. The user is presented with an image of a test product that is on a shelf. The data collected is based upon their physical reactions such as eye focus and heart rate. The dependent claims incorporate providing questions to users and collecting the user responses, however, there remains a distinct difference in the methodology used for data collection. The original claims collected data via user interactions (i.e. clicks) while the new claims collect data via user reactions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 44-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Objections***

4. The amendment filed on April 23, 2007 has cancelled claim 6. Thus the examiner hereby withdraws the objection to Claim 6 raised in the Office Action dated August 24, 2006.

#### ***Claim Rejections - 35 USC § 101***

5. The amendment filed on April 23, 2007 has cancelled Claims 1 – 21. Thus the examiner hereby withdraws the 35 U.S.C. 101 rejections of Claims 1 – 21 detailed in the Office Actions dated February 10, 2006 and August 24, 2006.

***Claim Rejections - 35 USC § 112***

6. The amendment filed on April 23, 2007 has cancelled Claims 1-6, 14, 19, and 21. Thus the examiner hereby withdraws the 35 U.S.C. 112 rejections of Claims 1-6, 14, 19, and 21 detailed in the Office Actions dated February 10, 2006 and August 24, 2006.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 27, and 37 – 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke. ("Virtual shopping: Breakthrough in marketing research", Harvard Business Review, Boston: Mar/Apr 1996, Vol. 74, Issue 2, pgs 120-131).

Claim 27: Burke discloses a method of collecting testing data from a panelist relating to a product comprising the steps:

- a. Displaying a visual image of the product on an Internet Web site, viewable by the panelist, wherein the product comprises an identifiable characteristic. (Page 123, Col 1, line 36 through Col 2, line 12; and Page 130, Col 2, lines 37-49)
- b. Modifying the identifiable characteristic of the product viewable by the panelist; wherein the identifiable characteristic of the product is chosen from packaging of the product, location of the product on a store shelf, arrangement of the product with respect to other products, or combinations thereof, and the panelist is asked to make purchasing decisions based upon the said modification. (Page 120, Col 1, line 20 through Col 2, line 8; Page 126, Col. 2, line 24 through Page 127, Col 1, line 36; and Page 130, Col 1, line 14 through Col 2, line 18)
- c. Obtaining purchase decisions from the panelist based upon the identifiable characteristics. (Page 123, Col 1, line 36 through Col 1, line 12).

While describing the virtual store, Burke uses implied questioning such as modifying the pricing, packaging or shelf positioning to determine if it effects the panelists purchase decision. He also discloses on Page 122, Col 2, lines 26-55, that simulated test-market services utilize questionnaires in a simulated shopping environment. While he does not specifically state that questionnaires or surveys are utilized in the virtual shopping environment, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate questionnaires and surveys in the virtual shopping environment disclosed by Burke. One would have been motivated to utilize questionnaires in order to obtain

qualitative data regarding the panelist's perceptions as to why a specific purchase decision was made.

Claim 37: Burke discloses the method of claim 27, wherein the identifiable characteristic of the product comprises packaging. (Page 120, Col 1, line 20 through Col 2, line 8; Page 126, Col. 2, line 24 through Page 127, Col 1, line 36; and Page 130, Col 1, line 14 through Col 2, line 18)

Claim 38: Burke discloses the method of claim 27, wherein the visual display of the product further comprises shelves, wherein the product is shelved on at least one shelf of the shelves, and wherein other products are shelved on the shelves. (Page 126, Col 1, line 1 through Col 2, line 23)

Claim 39: Burke discloses the method of claim 38, wherein the identifiable characteristic of the product is chosen from location of the product on a store shelf, arrangement of the product with respect to other products, or combinations thereof. (Page 120, Col 1, line 20 through Col 2, line 8; Page 126, Col. 1, line 1 through Page 127, Col 1, line 36; and Page 130, Col 1, line 14 through Col 2, line 18)

Claim 40: Burke discloses the method of claim 39, further comprising the step of providing a reward to the panelist for participating in the data collection. (Page 122, Col 2, lines 26-55)

Claim 41: Burke discloses the method of claim 27, where the virtual visual display further comprises a shopping stimulus, wherein the shopping stimulus is chosen from a coupon, sign, banner, advertisement, or combination thereof. (Page 125, Col 1, lines 15-28)

Claim 42: Burke discloses the method of claim 27, while Burke does not specifically state that questions on an internet web site are used to screen potential panelists he does disclose on page 125, lines 37-43 that Goodyear conducted a study of 1,000 people that had recently purchased or were planning to purchase passenger tires. In order to obtain such a targeted group a screening process had to be utilized. Burke also disclose on page 130, lines 37-49 that Internet virtual shops present opportunities for doing real-time testing of marketing ideas. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to conduct the screening on the internet web site of the virtual shop. One would have been motivated to do so in order to, in real time, gather data from only those specific visitors that meet a specific target marketing criteria.

Claim 43: Burke discloses the method of claim 27, wherein the Interact Web site is viewable by the panelist at a kiosk, computer, personal digital assistant, cell phone, automobile computer, interactive television, internet appliance, or combinations thereof. (Page 125, Col 2, lines 9-15)



***Response to Arguments***

9. Applicant's arguments with respect to claims 27, and 37-54 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

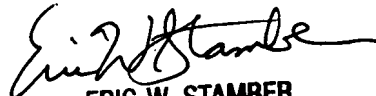
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 7am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3622

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
jvb

  
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